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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/909,712 08/11/97 CHASE JR

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PM82/1207

EXAMINER

SANTOS, R

ART UNIT

PAPER NUMBER

3628

DATE MAILED:

12/07/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/09/12

Applicant(s)

Chase, Jr.

Examiner

R. Santos

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5-4-99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11 and 13-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-11 and 13-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on May 4, 1999 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/909,712 is acceptable and a CPA has been established. An action on the CPA follows.

DETAILED ACTION

Specification

2. The disclosure is objected to because of the following informalities: In page 7, line 27: "at" should be deleted.

Appropriate correction is required.

Claim Objections

3. Claims 21-23 are objected to because of the following informalities: In each of the fourth lines of these claims, the "and" located between "defining" and "opening" should be changed to --an--.

Appropriate correction is required.

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Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Stafford.

Stafford shows the claimed limitations of a “massage support apparatus” (10) comprising an “inflatable body supporting structure” (11, 12) having a top surface and a bottom surface, said top and bottom surfaces defining an enclosure therebetween, said inflatable body structure having a head end and a foot end; and a “massage facilitating feature” (15) formed into the inflatable body supporting structure (see Figures 1-3; column 1, lines 35-40 & 51-52 and column 2, lines 1-8). As concerns claim 2, the reference is considered to show the use of an “inflation valve” (17) in Figures 1 & 3 and in column 2, lines 8-17. As concerns claim 3, the reference is considered to show the use of an “interior face cradle” (central tube 14 positioned on upper section 12 of the support apparatus) disposed proximate to the head end of the inflatable body supporting structure (see Figure 1). As concerns claim 4, the reference discloses a condition wherein the interior face cradle is “inflatable” in column 1, lines 48-49.

With regards to claims 8 and 9, the reference is considered to show a condition wherein the massage facilitating feature further comprises “knee support regions” (webs 15 located on lower section 11 of the support apparatus) and “arm cradling portions” (webs 15 located on upper

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section 12 of the support apparatus) formed into the inflatable body supporting structure, wherein the knee support regions are disposed proximate to the foot end of the inflatable body supporting structure (see Figure 1). As concerns claim 10, the reference is considered to show a condition wherein the support apparatus is formed of "lightweight foldable material" in column 1, lines 15-18 and in column 2, lines 4-8.

6. Claims 1-10 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard. Howard shows the claimed limitations of a "massage support apparatus" (10) comprising an "inflatable body supporting structure" (20, 22) having a top surface and a bottom surface, said top and bottom surfaces defining an enclosure therebetween, said inflatable body structure having a head end and a foot end; and a "massage facilitating feature" (38) formed into the inflatable body supporting structure (see Figures 1-3; column 2, lines 30-37; and column 3, lines 19-28). As concerns claim 2, the reference is considered to show the use of an "inflation valve" (26, 28) in Figures 1, 3, & 4 and in column 2, lines 65-67. As concerns claim 3, 18, and 19, the reference is considered to show the use of an "interior face cradle" (the upper portion of element 38 which is located on element 22) disposed proximate to the head end of the inflatable body supporting structure (see Figure 1). As concerns claims 4 and 18, the reference discloses a condition wherein the interior face cradle is "inflatable" in column 3, lines 19-28. As concerns claim 5 and 20, the reference discloses the use of an "inflation valve" (28) coupled to the interior face cradle (see Figure 1 and column 3, lines 26-28). With regards to claim 6 and with further

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regards to claim 18, the reference discloses the use of a “faceplate opening” (the uppermost opening 12 located on upper section 22 of the inflatable body supporting structure) disposed near the head end of the inflatable body supporting structure, said faceplate opening formed completely through the inflatable body supporting structure (see Figures 1 & 5). As concerns claim 7 and with further regards to claim 18, the reference is considered to show the use of an “interior body bolster” (40) disposed between the head end and the foot end of the inflatable body supporting structure in Figure 1 and in column 3, lines 19-22. With regards to claims 8 and 9 and with further regards to claim 18, the reference is considered to show a condition wherein the massage facilitating feature further comprises “knee support regions” (openings 12a located in the lower section 20 of the supporting structure) and “arm cradling portions” (openings 12a located in the upper section 22 of the supporting structure) formed into the inflatable body supporting structure, wherein the knee support regions are disposed proximate to the foot end of the inflatable body supporting structure (see Figure 1). As concerns claim 10, the reference is considered to show a condition wherein the support apparatus is formed of “lightweight foldable material” in column 1, lines 57-60. Lastly, with further regards to claim 18, the reference discloses the use of an “inflatable foot bolster” (the lower portion element 38 located on element 20) adapted to be disposed proximate to the foot end of the inflatable body supporting structure, and having a top surface and a bottom surface together defining an enclosure therebetween when the inflatable foot bolster is inflated (see Figures 1, 3, & 5 and column 3, lines 22-28).

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7. Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,312,987 to Emery. Emery '987 shows the claimed limitations of an "inflatable face cradle" (10) and an "inflation valve" (12) coupled to the interior of the face cradle, wherein the inflatable face cradle further comprises a "forehead supporting region" (11), a "first cheek supporting region" (14, 15), and a "second cheek supporting region" (14, 15), and wherein the inflatable face cradle is formed of "lightweight foldable material" (see Figure 3; column 2, lines 60-64 & 71-72; and column 3, line 1).

8. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Swiss Patent No. 602,056. Swiss '056 shows the claimed limitations of an "inflatable foot bolster" (1) and an "inflation valve" (9, 10) coupled to the interior of the foot bolster, wherein the inflatable foot bolster further comprises a "first depression" (8) and a "second depression" (8), wherein the bottom surface of the inflatable foot bolster is "flat" (2'), and wherein the foot bolster is formed of "lightweight foldable material" (see Figures 3 & 4 and the Abstract).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard.

Howard is considered to show the use of a condition wherein the interior face cradle (the upper portion of element 38 which is located on element 22) comprises a “U-shaped structure” having a first side (the left upper portion of element 38), a second side (the right upper portion of element 38), and a base (located between the left and right upper portions of element 38), said first side and second side and said base defining an “opening” (the uppermost element 12) therebetween, said first side of said U-shaped structure comprising a “first cheek supporting region”, said second side of said U-shaped structure comprising a second cheek supporting region”, and said base of said U-shaped structure comprising a “forehead supporting region” (see Figure 5). However, Howard does not specifically disclose a condition wherein the width of the U-shaped structure measured from the first side of the U-shaped structure to the second side of the U-shaped structure is “approximately 10 inches”, and the length of the U-shaped structure from the base to the end of the opening is “approximately 8.5 inches.” It would have been an obvious matter of design choice to modify the Howard reference by providing a U-shaped structure having a width of “approximately 10 inches” to a length of “approximately 8.5 inches”, since it appears that the device of Howard would perform equally well with a U-shaped structure having smaller or greater dimensions in order to accommodate users of varying sizes.

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11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Emery. Emery is considered to show the use of a condition wherein the interior face cradle (10) comprises a “U-shaped structure” having a first side (42, 43), a second side (40, 44), and a base (41), said first side and second side and said base defining an “opening” therebetween, said first side of said U-shaped structure comprising a “first cheek supporting region”, said second side of said U-shaped structure comprising a second cheek supporting region”, and said base of said U-shaped structure comprising a “forehead supporting region” (see Figure 1). However, Emery does not specifically disclose a condition wherein the width of the U-shaped structure measured from the first side of the U-shaped structure to the second side of the U-shaped structure is “approximately 10 inches”, and the length of the U-shaped structure from the base to the end of the opening is “approximately 8.5 inches.” It would have been an obvious matter of design choice to modify the Emery reference by providing a U-shaped structure having a width of “approximately 10 inches” to a length of “approximately 8.5 inches”, since it appears that the device of Emery would perform equally well with a U-shaped structure having smaller or greater dimensions in order to accommodate users of varying sizes.

12. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard in view of Mirando. Howard does not specifically disclose a condition wherein the interior body bolster comprises a “self-closing pressure sensitive air valve” which is adapted to release air into the inflatable body supporting structure when subjected to excessive force. Mirando teaches the

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use of an inflatable support device (10) provided with an interior “self-closing pressure sensitive air valve” (22) which is adapted to release air into the inflatable body support device when subjected to excessive force (see Figures 1-3 & 5; column 3, lines 1-8 & 56-72). The skilled artisan would have found it obvious to provide the massage support structure of Howard with an interior body bolster comprising a “self-closing pressure sensitive air valve” which is adapted to release air into the inflatable body supporting structure when subjected to excessive force in order to facilitate further inflation of the support structure as desired.

Response to Pre-Amendment

In response to Applicant’s arguments on pages 5-7 of his amendment stating that the Stafford reference does not teach or suggest the use of a “massage support apparatus”, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The examiner respectfully maintains that the Stafford reference teaches the use of a “massage facilitating feature” since this limitation does not contain any specific structure as disclosed within the claims. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore, it is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

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In response to Applicant's arguments on pages 7-10 of his amendment stating that the Howard reference does not teach or suggest the use of a "massage support structure", the examiner respectfully reiterates that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The examiner respectfully asserts that the Howard reference discloses the newly-added structural elements which form the inflatable "interior face cradle" as stated in Applicant's claims 21 and 23, and that Howard also teaches the use of an "inflatable foot bolster" and "massage facilitating feature" since these limitations do not contain any specific structure as disclosed within the claims. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore and as stated earlier, it is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

In response to Applicant's arguments on pages 10 and 11 of his amendment stating that the Emery '987 reference does not teach or suggest the use of a "massage support apparatus" and as stated earlier, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The examiner respectfully asserts that Emery '987 discloses the structural limitations of an "inflatable face cradle" comprising a U-shaped structure having a "first side", a "second side",

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and a “base” as disclosed by Applicant in newly-added claim 22. Again, claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Lastly, in response to Applicant’s arguments on pages 11 and 12 of his amendment stating that Swiss Patent No. 602,056 does not teach the use of an “inflatable massage support structure”, the examiner respectfully reiterates that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The examiner respectfully maintains that Swiss Pat. No. ‘056 discloses the structural limitations of an “inflatable foot bolster” having a “flat” bottom surface as disclosed in Applicant’s claim 16 (see Figures 3 & 4, which show an inflatable embodiment of the device). As stated earlier, claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Conclusion


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- 1) U.S. Patent No. 5,893,183 to Bechtold, Jr.
- 2) U.S. Patent No. 5,890,246 to Davis
- 3) U.S. Patent No. 3,068,494 to Pinkwater

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Mondays through Fridays from 9:30 a.m. to 6:00 p.m.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-2168.



TERRY LEE MELIUS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

R.S.

June 14, 1999